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09/750,744	12/28/2000	Hyung Byum Kim	13788	7201

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EXAMINER

WEBB, JAMISUE A

ART UNIT

PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 11

Application Number: 09/750,744  
Filing Date: December 28, 2000  
Appellant(s): KIM ET AL.

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Paul Yee  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 13, 2002 and supplemental brief filed November 26, 2002.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because even though the appellant has provided examples of each claim the appellant has still only presented one argument/issue for Claims 23-33, 35 and 37, and another argument/issue for Claims 34 and 36. Therefore Claims 23-33, 35 and 37 stand and fall together, and Claims 34 and 36 stand and fall together.

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

6,236,525	Hamajima et al.	12-2001
5,643,240	Jackson et al.	6-1998
5,769,834	Reiter et al.	7-1997

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Appellant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 27-33, 25 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamajima et al. (6,326,525) in view of Jackson et al. (5,643,240).

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With respect to Claims 23-28, 35 and 37: Hamajima discloses the use of an absorbent article (1) with a core (33) and a two layer pledget (27, 24) made out of a non-woven material (column 5, lines 11-18).

With respect to the cover layer being hydroentangled and hydroapertured: Hamajima discloses the topsheet being an apertured nonwoven fabric (column 5, line 1), therefore being apertured and entangled (due to the fabric being a nonwoven web), the formation of the apertures and entanglement are Product-by-Process limitations, and these limitations are not limited to the manipulations of the steps, only the structure implied by these steps (see MPEP 2113). It follows that if the product in the claim with the product-by-process limitation is the same as the product of the prior art, the claim is unpatentable even though the prior art was made by a different process. Therefore, cover layer being entangled and apertured using a hydro method or means, is anticipated in the Hamajima reference.

Hamajima fails to disclose the pledget being a through air bonded carded web. Jackson discloses the use of a layered article, where the top layer, or pledget (26) is made from a lofty nonwoven material that is made by through air bonded carded staple fiber web, having a basis weight of between 17-35 gsm and a fiber denier of 3. (column 6, lines 47-63). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pledget of Hamajima, be made of the material of Jackson, in order to maintain a lofty layer which will maximize fluid intake and minimize rewet (see Jackson, column 4).

With respect to Claim 29: See Column 6, lines 50-56.

With respect to Claim 30: Hamajima discloses the pledget being the same length as the article, which in Figure 1 and 3 measure over 100mm, and the width being between 15-60mm (column 3, lines 44-46).

With respect to Claims 31-33: Hamajima discloses the use of a cover (23), a wrapping element (31), a fluid distribution layer (24), and embossed grooves that are between 0.1-5mm (column 4, lines 44-46) (See Figure 2A and B).

Claims 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamajima in view of Reiter et al. (5,769,834).

With respect to Claim 34: Hamajima, as disclosed for claim 23 above, fails to disclose the topsheet comprising rayon material. Reiter discloses the use of a topsheet that comprises well-known material such as rayon and rayon/polyester blend. (column 5, lines 11-31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the topsheet of Hamajima be made of rayon or rayon/polyester blend of Reiter, in order to have a topsheet with relatively hydrophobic materials having good strike-through characteristics. (see Reiter column 5).

With respect to Claim 36: Reiter discloses the rayon/polyester blend, but does not disclose the specifics of 70% rayon and 30% polyester. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the amount of rayon be 70% and the amount of polyester be 30%, since it has been held that where the general conditions of a claim are disclosed in the prior art, that discovering the workable range or obvious range involves only routine skill in the art. *In re Aller*, 105 USPQ 233

**(11) Response to Argument**

With respect to appellant's arguments for Issue 1: The 112 2<sup>nd</sup> paragraph rejections made in the final office action are now dropped.

With respect to Appellant's arguments for Issue 2: The appellant has argued that the base reference, Hamajima, does not disclose an article having a cover which is hydroentangled and hydroapertured, and that the examiner has engaged in impermissible hindsight and used appellant's own disclosure as a template for picking and choosing components to synthesize appellants' claimed invention. The appellants are arguing the rejection stating that Hamajima, and the secondary reference, Jackson, fails to provides a topsheet being hydroentangled and hydroapertured, the rejection of record states that Hamajima discloses a topsheet that is in fact entangled and apertured, and that forming the apertures and providing the entanglement using a hydro method, is considered a product by process limitation. It is well known in the art that there are many methods available that are used to aperture and entangle a web, and using these methods will result in the same end structure, a web that is entangled and apertured. Therefore the end structure of the topsheet of the instant invention is the same that is disclosed by Hamajima, they both end up with an entangled, apertured web. The appellant has failed to even address the product by process part of the rejection. All that is argued is that Hamajima, and/or Jackson does not teach the hydroentangled and hydroapertured web, but no further reasoning as to why appellant makes this conclusion has been presented. Appellant has also argued the combination of Hamajima and Jackson in terms of neither of them disclosing the topsheet to be

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hydroentangled and hydroapertured, which the rejections clearly states Hamajima teaches, as detailed above.

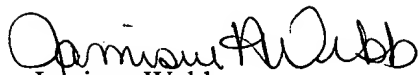
With respect to Appellant's arguments for Issue 3: Appellant is once again arguing that the combination of primary reference Hamajima and secondary reference Jackson does not disclose the topsheet being hydroentangled or hydroapertured. See above for reasons as to why the limitation is anticipated by the Hamajima reference. The appellant also states that the combination of references does not disclose the pledget having a composite of a Thru-Air bonded web and an airlaid nonwoven material, this is not required by the claims, therefore the arguments are not commensurate with the scope of Claims 34 and 36.

For the above reasons, it is believed that the rejections should be sustained.



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Respectfully submitted,



Janisue Webb  
January 30, 2003

Conferees


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